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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

In re  
 PLANT INSULATION COMPANY, a  
 California corporation,  
 Debtor.  
 ONEBEACON INSURANCE CO., *et al.*,  
 Appellants,  
 v.  
 PLANT INSULATION CO., *et al.*,  
 Appellees.

Case No. 3:14-cv-01200-RS  
 Bk. Case No. 3:09-BK-31347 TEC  
 Chapter 11

**STIPULATED JOINT MOTION AND**  
~~**PROPOSED ORDER FOR EXTENSION**~~  
**OF TIME FOR APPELLANTS TO**  
**APPEAL FROM ORDER AFFIRMING**  
**CONFIRMATION OF AMENDED AND**  
**RESTATED SECOND AMENDED PLAN**  
**OF REORGANIZATION OF PLANT**  
**INSULATION COMPANY,**  
**AS MODIFIED**

**(Fed.R.App.P. 4(a)(5), Local Rules 6-2, 7-12)**

1           **I.       INTRODUCTION**

2           This stipulated motion<sup>1</sup> is brought jointly by the Plan Proponents<sup>2</sup> and the appellant  
 3 insurers pursuant to Fed.R.App.P. 4(a)(5) to extend the date for the filing of any appeal  
 4 from this Court's order affirming the Bankruptcy Court's Confirmation Order, which was  
 5 entered on August 18, 2014 (the "Affirmation Order"). Because the parties have settled  
 6 their disputes pending the expiration of a reconsideration period for any party to object to  
 7 the settlements, they expect that by extending the appeal period, there will be no need for  
 8 an appeal to be filed. Filing an appeal only to then seek its dismissal would cause  
 9 unnecessary work for the judicial system and expense for the parties that can be avoided  
 10 by an extension.

11           **II.     FACTUAL STATEMENT<sup>3</sup>**

12           The Plan Proponents have now settled with the appellant insurers that had sought  
 13 review of the Bankruptcy Court's Confirmation Order in this Court. This Court denied the  
 14 appeal and entered the Affirmation Order on August 18, 2014. (*See* Docket No. 77). Any  
 15 appeal from that Order is due on or before September 17, 2014, pursuant to Fed.R.App.P.  
 16 4(a) (applicable pursuant to Fed.R.App.P. 6(b)).

17           Under the Plan of Reorganization that was the subject of the Affirmation Order, the  
 18 Bankruptcy Court had jurisdiction up until September 2, 2014 in which to designate  
 19 additional insurers as Settling Asbestos Insurers under the Plan. By two motions filed on  
 20 \_\_\_\_\_

21           <sup>1</sup> This request is brought as a motion based on the language of Fed.R.App.P. 4(a)(5) that  
 22 call for a motion for extension of time. It is in all other respects a stipulated request  
 23 pursuant to Local Rule 6-2. The insurers have authorized the Plan Proponents to file this  
 motion and to state that they join in it.

24           <sup>2</sup> The Plan Proponents are Bayside Insulation & Construction, Inc., a California  
 25 corporation, the Official Committee of Unsecured Creditors of Plant Insulation Company,  
 26 and the Honorable Charles B. Renfrew (Ret.), appointed by the Bankruptcy Court under  
 Bankruptcy Code Section 524(g)(4)(B)(i) as the legal representative on behalf of persons  
 holding potential asbestos injury demands against Plant.

27           <sup>3</sup> The facts set forth herein are supported by the accompanying Declaration of Steven B.  
 28 Sacks.

1 August 25 and 27, the Plan Proponents sought approval of settlements with the remaining  
 2 objecting insurers, OneBeacon Insurance Company, OneBeacon America Insurance  
 3 Company, American Employers' Insurance Company, Transport Insurance Company as  
 4 successor in interest to Transport Indemnity Company, American Home Assurance  
 5 Corporation, Insurance Company of the State of Pennsylvania, Granite State Insurance  
 6 Company, and United States Fidelity & Guaranty Company, along with their affiliates.  
 7 The Bankruptcy Court entered orders shortening time for hearing the motions to August  
 8 29, 2014. No party objected to the relief sought in the motions and following the hearing,  
 9 the Bankruptcy Court entered Settlement Approval Orders approving the settlements. (*See*  
 10 Exhibits A and B to Sacks Declaration). Because the settlements were approved on  
 11 motions heard on shortened time, the Bankruptcy Court provided any potential objectors  
 12 with a 21-day period in which to seek reconsideration of the approval orders. That period  
 13 ends on September 19, 2014.

14 The settlements with these insurers provide for them to be able to preserve their  
 15 rights to appeal from the Affirmation Order until the later of the Settlement Effective Date,  
 16 which is on September 19 unless reconsiderations is sought, or the entry of an order of the  
 17 Bankruptcy Court denying reconsideration. (*See* Exhibits C and D to Sacks Declaration).  
 18 Any notice of appeal from the Affirmation Order is due on September 17, 2014. In order  
 19 to avoid the need for filing a notice of appeal before it is determined if any party is seeking  
 20 reconsideration, the parties have agreed to seek an extension of time in which to do so  
 21 from this Court.

### 22 **III. DISCUSSION**

23 Under Fed.R.App.P. 6(b), appeals from this Court acting in its appellate capacity  
 24 are governed by the normal rules governing time to appeal contained in Rule 4, with  
 25 certain exceptions not applicable here. The time for filing an appeal is normally 30 days,  
 26 but Fed.R.App.P. 4(a)(5)(A)(ii) allows this Court to extend that time either before or after  
 27 its expiration based on a showing of good cause. In this case, the extension can be for up  
 28

1 to 30 days after the normal date for filing, or to and including October 17, 2014.  
 2 Fed.R.App.P. 4(a)(5)(C).

3 Here, all parties agree there is good cause to extend the time to file an appeal.  
 4 Under the settlement agreements, an appeal would only be filed as a protective measure in  
 5 the unlikely event that a party in interest sought reconsideration, and would only be  
 6 pursued in the even more unlikely event that the Bankruptcy Court granted reconsideration  
 7 and withdrew approval for one or both settlements. The easiest way to preserve appellate  
 8 rights in this instance is by merely extending the time in which to file the notice of appeal  
 9 until it is determined if at least the first eventuality of a motion for reconsideration comes  
 10 to pass. By doing so, the parties need not incur fees for filing the appeal, the time and  
 11 expense of following the necessary steps to perfect the appeal once filed, nor the effort of  
 12 getting an appeal dismissed once it is filed. The court system will not have to process an  
 13 appeal that would most likely be dismissed.

#### 14 IV. CONCLUSION

15 The Plan Proponents and the Appellant insurers respectfully request that this Court  
 16 enter the proposed order extending the time for Appellants to file an appeal from the  
 17 Affirmation Order from September 17, 2014 to October 17, 2014.

18 Dated: September 10, 2014

19 CAPLIN & DRYSDALE, CHARTERED

20 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

21  
 22 By /s/ Steven B. Sacks  
 23 STEVEN B. SACKS

24 Attorneys for Official Committee of Unsecured  
 25 Creditors of Plant Insulation Company  
 26  
 27  
 28

1 Dated: September 10, 2014

2 FERGUS, A LAW OFFICE

3  
4 By /s/ Gary S. Fergus  
GARY S. FERGUS

5 Attorney for the Hon. Charles B. Renfrew (Ret.),  
6 Futures Representative

7  
8 Dated: September 10, 2014

9 SCHNADER HARRISON SEGAL & LEWIS LLP

10  
11 By /s/ George H. Kalikman  
GEORGE H. KALIKMAN

12 Attorneys for Bayside Insulation & Construction, Inc.

13 SO STIPULATED.

14 DENTONS US LLP

15  
16 By /s/ Robert B. Millner

17 Robert B. Millner

18 Attorneys for OneBeacon Insurance Company

19 And for purposes of this stipulation only, on  
20 behalf of the following parties in interest and  
their counsel: American Home Assurance  
21 Company, Granite State Insurance Company,  
Insurance Company of the State of Pennsylvania,  
22 Transport Indemnity Company and United States  
Fidelity and Guaranty Company<sup>4</sup>

23  
24  
25  
26 \_\_\_\_\_  
27 <sup>4</sup> Steven Sacks hereby attests that he has on file the holographic signature corresponding to  
28 the Appellants' signature indicated by a conformed signature (/S/) within this e-filed document.

**ORDER**

Good cause appearing, based on the foregoing it is hereby ordered that the date for Appellants to file a notice of appeal from this Court's Order entered August 18, ~~2019~~<sup>2014</sup> is extended from September 17, 2014 to and including October 17, 2014.

Dated: September 11, 2014



UNITED STATES DISTRICT JUDGE